

**OPINION
48-218**

April 20, 1948 (OPINION)

SCHOOLS

RE: Teachers - Salary During Closing of School

This office is in receipt of your letter of April 16, 1948, in which you ask our opinion on the following state of facts:

On account of the heavy snow this winter and the inability to get fuel oil hauled on account of impassable roads you have not had school for approximately three months. That is, from the Christmas holidays until a couple of weeks ago. You desire to know if the school board is compelled to pay the teachers for these three months.

I assume that the teachers were on hand, and ready, willing, and able to continue teaching during the entire three months. During that time they, of course, had to pay their board and other living expenses, and the fact that the roads were bad and that the school board was unable to get fuel oil to the schoolhouse was no fault of the teachers. The question then arises whether the road conditions, the snow, and the fact that the board was unable to procure fuel oil created a condition so grave and serious as to be considered an Act of God so as to relieve the school board from liability for payment of the teachers' salaries.

"An 'act of God' is any accident, due directly and exclusively to natural causes without human intervention, which by no amount of foresight, pains, or care, reasonably to have been expected, could have been prevented. The principle embodied in all of the definitions is that the act must be one occasioned exclusively by the violence of nature and all human agency is to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the operation of the rules applicable to the acts of God. Thus if a party is in default for not performing a duty or not anticipating a danger, or where his own negligence has contributed as the proximate cause of the injury complained of, he cannot avoid liability by claiming that it was caused by an 'act of God.' * * *"

I presume that the school term opened in September last fall, and it would seem that the school board could have made provisions for laying in fuel oil some time between the opening of the school term and the first of the year when the roads became impassable. In any event, the proximate cause of the lack of fuel oil was not the condition of the roads and weather, but the inadvertent failure of the board to supply fuel oil while the roads and weather would permit.

Under the circumstances, it would be the opinion of this office that if the teachers continued to be in readiness to teach, and did not go

elsewhere, they are entitled to their salaries during the time that school act or negligence on the part of the teachers.

NELS G. JOHNSON

Attorney General